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Supreme Court, U.S.
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No. _____ 08-300 SEP 3 - 2008

In the
Supreme Court of the United States

SANDI D. JACKSON, as a next friend and parent of KEELY A. JACKSON,

Petitioner,

v.

FRANK NIX, SUSIE YONKERS, JEANNIE COLE, AMY BURKE, SHANNON ATKINSON, KIM WILSON, AMY NIX, and KERI CRESS,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Sixth Circuit affirmed the District Court's decision to dismiss the Petitioner's complaint granting the Respondents' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. The Petitioner alleged that the Defendants individually and in concert with each other had violated her daughter's constitutional rights by seizing her and subjecting her to abuse while in foster care. The Sixth Circuit held that the allegations in her complaint were not specific enough to address how the Defendants' actions were objectively unreasonable.

The question presented is:

Did the District Court and the Sixth Circuit Court incorrectly interpret this Court's ruling in Bell Atlantic Corp. v. Twombly, 550 U.S. ____, 167 L.Ed.2d 929, (2007) applying a stricter requirement for pleading than this Court intended.

LIST OF PARTIES

The parties below are listed in the caption.

CORPORATE DISCLOSURE STATEMENT

None of the parties are afflicted with a corporation foreign or domestic.

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Petitioner respectfully petitions for a writ of certiorari to review the judgment of the Sixth Circuit Court of Appeals in this case.

OPINIONS BELOW

Neither the opinion of the Sixth Circuit Court of Appeals (Appendix A) or the opinion of the District Court for the Middle District of Tennessee (Appendix B) are reported.

STATEMENT OF JURISDICTION

The judgment of the Sixth Circuit Court of Appeals was entered on June 9, 2008. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the Constitution of the United States and Federal Rule of Civil Procedure Rule 8(a)(2), (e) and (f).

The Fourteenth Amendment states in pertinent part:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Federal Rule of Civil Procedure Rule 8(a)(2), (e) and (f) states in pertinent part:

> (a) Claim for Relief. A pleading...shall contain (2) a short and plain statement of the claim showing that the pleader is entitled to relief...
>
> (e) Pleading to Be Concise and Direct; Consistency.
>
> (1) Each averment of a pleading shall be simple, concise and direct. No technical form of pleading or motion are required.
>
> (f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

STATEMENT OF THE CASE

The Petitioner's minor daughter was seized from her by the State of Tennessee's Department of Children Services without a warrant on March 10, 2004. After a hearing before the Juvenile Court of Sumner County, Tennessee on March 12, 2004, the Petitioner's minor child was placed into custody of the Department of Children Services until March 20, 2005 during which time the child was placed in a foster home.

The Petitioner filed suit *pro se* on March 3, 2006 suing the present Respondents and several other defendants. The Petitioner amended her complaint on May 29, 2006 dismissing several of the defendants. At the time she filed her amended complaint, the

Respondents had pending before the Court a motion to dismiss pursuant to Federal Rule of Civil Procedure Rule 12(b)(6). The District Court gave the Petitioner adequate time to file another amended complaint to allege sufficient facts to withstand the Respondents' Rule 12 motion. The second amended complaint was filed and contained the following allegations against the Respondents:

> 4. Facts of the Case. On March 10, 2004, the Plaintiff, Keely Jackson [Jackson] was seized from her mother, Sandi Jackson, without a hearing, by the Defendants. After a hearing before the Juvenile Court of Sumner County on March 12, 2004, Jackson was placed in the custody of the Department of Children's Services from March 10, 2004 until March 20, 2005. During this time, Jackson was first placed in a foster home run by Laurenda Wisenhut until December 23, 2004. Jackson remained in the custody of the State of Tennessee Children's Services until released to her mother on March 7, 2005.
>
> 5. Factual Violations of Due Process. The Defendants in this case, individually and in concert with each other, violated the Plaintiff's substantive due process rights as guaranteed by the Fourteenth Amendment to the United States Constitution by subjecting her to the following unnecessary harm by seizing her from the care of her mother and by failing to adequately supervise her while she was in foster care:

a. Allowing the Plaintiff's foster care parents to expose her to unwelcome religious views which conflicted with that of her family's.

b. Exposing the Plaintiff to an individual whom she had accused of sexually abusing her, and thus allowing her to be sexually assaulted again while in foster care.

c. Failure to adhere to allow her mother to develop a relationship with her, by denying her adequate time with her mother.

d. Failure to adequately provide for her medical needs, when it was apparent she had been physically injured.

e. Failure to investigate injuries received by the Plaintiff while in foster care.

f. Causing her loss of societal relations by removing her from her mother's care, by failing to adequately investigate the circumstances leading to the removal and failing to verify critical information before seizing her.

6. The Defendants knew or should have known that the unnecessary harm was occurring to the Plaintiff while in their care, supervision and control. Their failure to adequately monitor and supervise the Plaintiff's environment amounted to a deliberate indifference to the welfare of the Plaintiff. Further, their failure to adequately investigate

> the circumstances leading to the Plaintiff's seizure and removal from the care of her mother amounted to deliberate indifference to the welfare of the Plaintiff.
>
> 7. Damages. As a direct and proximate result of the unconstitutional actions of the Defendants, heretofore set forth, the Plaintiff has suffered great emotional distress, humiliation and embarrassment, and loss of societal relationship with her family.

The District Court determined the complaint still did not meet the standard for pleadings set by this Honorable Court in Bell Atlantic Corp. v. Twombly, 550 U.S. ____, 167 L.Ed.2d 929 (2007) (Appendix B). The Sixth Circuit affirmed the District Court in a brief opinion. (Appendix A)

REASON FOR ALLOWANCE OF WRIT

I. The Sixth Circuit's decision does not reflect the intent of this Court's decision in Twombly

Twombly did not abrogate Rule 8 of the Federal Rules of Civil Procedure but rather held that the factual allegations contained in a complaint must raise a right to relief above the speculative level on the assumption that the allegations in the complaint are true regardless if doubtful in fact.

The Sixth Circuit and the District Court by dismissing the Plaintiff's complaint held the Petitioner to a higher level of proof from the onset of her litigation required by Rule 8 and Twombly. The

Petitioner alleged that *individually* and *in concert with each other*, the Respondents allowed her child's foster parents to expose her to unwelcome religious views, allowed a person whom she had accused of sexually abusing her to assault her again, harming her relationship with the child by denying her visitation, failure to provide for her child's medical needs after she had been injured, then failing to investigate those injuries; and failing to perform an adequate investigation before seizing the child in the first instance. Respectfully without detailed questioning under oath and documents obtained during discovery, how much more detail was necessary to put the Respondents on notice of what they were being accused of?

II. The question present is important

Given the interpretation the Sixth Circuit has given to the Twombly decision, litigants in civil rights cases who have not yet engaged in discovery will be adversely affected if their cases are dismissed before litigation can effectively begin. Respectfully, it is clear from the second amended complaint what the Plaintiff was alleging and to whom the allegations were being placed against. A child is involved in this case. District and Circuit Courts should come down on the side of such litigants ever mindful that the purpose of pleadings are to "do substantial justice."

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 07-6010

[Filed June 9, 2008]

SANDI D. JACKSON, as next friend and parent of, KEELY A. JACKSON,	)
Plaintiffs-Appellants,	)
v.	)
FRANK MIX, SUSIE YONKERS, JEANNIE COLE, AMY BURKE, SHANNON ATKINSON, KIM WILSON, AMY NIX, KERI CRESS,	)
Defendants-Appellees.	)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

Before: KENNEDY and MARTIN, Circuit Judges, and HOOD, District Judge.*

BOYCE F. MARTIN, JR., Circuit Judge. Plaintiff Sandi Jackson alleges that defendants, individually and in concert with each other, violated her daughter Keely's constitutional rights. None of the factual allegations contained in her complaint, however, are linked with any specific defendant, and the complaint fails to address how defendants' actions were objectively unreasonable. Citing these failures, the district court gave Jackson twenty-one days to amend her complaint under *Achterhof v. Selvaggio*, 886 F.2d 826, 831 (6th Cir. 1989) (if a plaintiff fails to allege sufficient factual allegations necessary to sustain his § 1983 action, a court must accord the plaintiff an additional opportunity to come forward with such allegations). Instead of curing the problem, Jackson's second complaint simply re-alleges that "*all* of the defendants participated in violating her substantive due process rights by committing several unconstitutional acts." This is not specific enough to sustain her claim, and the defendants are thus entitled to a dismissal of the complaint under Fed. R. Civ. P. 12(b)(6) (failure to state a claim upon which relief can be granted). We thus AFFIRM the holding of the district court.

---

* The Honorable Joseph M. Hood, Senior United States District Judge for the Eastern District of Kentucky, sitting by designation.

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

No. 3:06-0182

[Filed August 8, 2007]

SANDI D. JACKSON, individually, and as next friend and parent of KEELY A. JACKSON, a minor child under the age of eighteen years old,	)
Plaintiffs,	)
v.	)
FRANK NIX, SUSIE YONKERS, JEANNIE COLE, AMY BURKE, SHANNON ATKINSON, KIM WILSON, TERESA TOWERY AMY NIX, KERI CRESS, VIOLA MILLER, all sued in their individual capacity,	)
Defendants.	)

JUDGE ECHOLS

MEMORANDUM

Pending before the Court is Defendants' Motion to Dismiss The Second Amended Complaint (Docket Entry No. 60) and Defendants' Motion For Summary Judgment (Docket Entry No. 64), to which Plaintiff Keely Jackson, through her next friend and parent, Sandi D. Jackson, responded in opposition.[1]

In a prior Memorandum and Order, the Court afforded Plaintiff Keely Jackson (hereinafter "Plaintiff") an opportunity to re-plead her complaint to state factual allegations to support any constitutional claim or claims she may have against the named Defendants, who are employees of the Tennessee Department of Children's Services ("DCS") and who are sued in their individual capacities. (Docket Entry Nos. 50 & 51.) Plaintiff filed her Second Amended Complaint on February 9, 2007. (Docket Entry No. 53.) Defendants then moved to dismiss the Second Amended Complaint and for summary judgment.

---

[1] The Court previously dismissed Sandi Jackson's own claims as time-barred. The Court also dismissed Defendant Viola Miller from the lawsuit. (Docket Entry Nos. 50 & 51, Memorandum and Order.

Remaining Plaintiff Keely Jackson, acting through her mother and next friend, now concedes that Defendant Teresa Towery should be dismissed from the case. (Docket Entry No. 78, Plaintiff's Memorandum 6.) Accordingly, Defendant Towery is hereby dismissed from the action.

I. FACTUAL ALLEGATIONS OF THE SECOND AMENDED COMPLAINT

The following paragraphs constitute the facts as stated in the Second Amended Complaint:

4. Facts of the Case. On March 10, 2004, the Plaintiff, Keely Jackson [Jackson] was seized from her mother, Sandi Jackson, without a hearing, by the Defendants. After a hearing before the Juvenile Court of Sumner County on March 12, 2004, Jackson was placed in the custody of the Department of Children's Services from March 10, 2004 until March 20, 2005. During this time, Jackson was first placed in a foster home run by Laurenda Wisenhut until December 23, 2004. Jackson remained in the custody of the State of Tennessee Children's Services until released to her mother on March 7, 2005.

5. Factual Violations of Due Process. The Defendants in this case, individually and in concert with each other, violated the Plaintiff's substantive due process rights as guaranteed by the Fourteenth Amendment to the United States Constitution by subjecting her to the following unnecessary harm by seizing her from the care of her mother and by failing to adequately supervise her while she was in foster care:

a. Allowing the Plaintiff's foster care parents to expose her to unwelcomed religious views which conflicted with that of her family's.

b. Exposing the Plaintiff to an individual whom she had accused of sexually abusing

her, and thus allowing her to be sexually assaulted again while in foster care.

c. Failure to adhere (sic) to allow her mother to develop a relationship with her, by denying her adequate time with her mother.

d. Failure to adequately provide for her medical needs, when it was apparent she had been physically injured.

e. Failure to investigate injuries received by the Plaintiff while in foster care.

f. Causing her loss of societal relations by removing her from her mother's care, by failing to adequately investigate the circumstances leading to the removal and failing to verify critical information before seizing her.

6. The Defendants knew or should have known that the unnecessary harm was occurring to the Plaintiff while in their care, supervision and control. Their failure to adequately monitor and supervise the Plaintiff's environment amounted to a deliberate indifference to the welfare of the Plaintiff. Further, their failure to adequately investigate the circumstances leading to the Plaintiff's seizure and removal from the care of her mother amounted to deliberate indifference to the welfare of the Plaintiff.

(Docket Entry No. 53, Second Amended Complaint at 3-4.)

II. DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

In evaluating the Second Amended Complaint under Federal Rule of Civil Procedure 12(b)(6), the Court must accept as true all of Plaintiff's allegations and resolve all doubts in Plaintiff's favor. See Morgan v. Church's Fried Chicken, 829 F.2d 10, 11-12 (6th Cir. 1987). While a complaint need not contain detailed factual allegations, the plaintiff must provide the grounds for her entitlement to relief, and this "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action." Bell Atlantic Corp. v. Twombly, 550 U.S. —, 167 L.Ed.2d 929, 940 (2007) (abrogating Conley v. Gibson, 355 U.S. 41 (1957)). The factual allegations supplied must be enough to show a plausible right to relief. Id. at 940-942. A complaint must contain either direct or inferential allegations respecting all of the material elements to sustain a recovery under some viable legal theory. Id. at 944; Scheid v. Fanny Farmer Candy Shops, Inc., 859 F.2d 434, 436 (6th Cir. 1988).

Defendants assert that, despite pleading for the third time, Plaintiff's Second Amended Complaint ("the Complaint") fails to state a claim against them. The Complaint does not make a single specific allegation of direct involvement as to any Defendant. Aside from the style of the case and a listing of the Defendants sued, the Complaint does not mention any Defendant by name or link any concrete factual allegations to any particular Defendant. Moreover, Plaintiff failed to comply with Anderson v. Creighton, 483 U.S. 635 (1983), because she did not plead with particularity a concrete constitutional right which has

been violated rather than an "abstract" constitutional principle, and she did not allege specific facts to support the alleged constitutional violation. Defendants contend they are entitled to qualified immunity, and Plaintiff failed to plead facts showing that Defendants are not entitled to qualified immunity. See Rippy v. Hattaway, 270 F.3d416, 424 (6th Cir. 2001) (citing Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982) for proposition that government officials performing discretionary functions are generally shielded from damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known).

The Complaint is deficient for the reasons stated by the Defendants. Even giving the Complaint a liberal construction under Federal Rule of Civil Procedure 8 and taking the alleged facts in a light most favorable to the Plaintiff, it is still not possible to tell what specific acts or omissions of each named Defendant are alleged to have violated Plaintiff's Fourteenth Amendment substantive due process rights. The Complaint speaks only in very general terms and does not provide either direct or inferential allegations respecting all of the material elements to sustain a recovery under some viable legal theory. See Twombly, 167 L.Ed.2d at 944; Scheid, 859 F.2d at 436.

Even if the Court assumes that the Complaint states a Fourteenth Amendment claim against each named Defendant, see Meador v. Cabinet for Human Resources, 902 F.2d 474 (6th Cir. 1990) (holding child placed in state-regulated foster home has substantive due process right to personal safety), Plaintiff has not

carried her burden to allege sufficient facts to indicate that state actions were objectively unreasonable in light of the clear constitutional right alleged, thus precluding Defendants' qualified immunity defense. See Williams v. Pollard, 44 F.3d 433, 435 (6th Cir. 1995). In the prior Memorandum, quoting Achterhof v. Selvaggio, 886 F.2d 826, 831 (6th Cir. 1989), the Court allowed the Plaintiff a chance to re-plead all of the factual allegations necessary to sustain a conclusion that the Defendants violated clearly established law. Unfortunately, Plaintiff has not done so. Thus, Defendants are entitled to dismissal of the Complaint under Rule 12(b)(6).

III. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Alternatively, the Court holds that, even if the Complaint could survive a Rule 12(b)(6) motion to dismiss, Defendants are still entitled to summary judgment on the issue of qualified immunity based on the factual record submitted to the Court in connection with the summary judgment motion. See Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986); Covington v. Knox County School Sys., 205 F.3d 912, 914 (6th Cir. 2000).

The evidence shows that Keely Jackson was three years old when the matters giving rise to this suit occurred. She is the minor daughter of Sandi Jackson and Mitch Lanphere. DCS workers in Robertson County investigated allegations of sexual abuse against Mr. Lanphere and determined the allegations to be unfounded.

During that investigation, a collateral source informed DCS of her concern that Ms. Jackson, a Nurse Practitioner, was over-medicating Keely with adult prescription sedatives and laxatives, and that Ms. Jackson was writing the prescriptions herself. This report prompted a DCS investigation in Sumner County into the allegations against Ms. Jackson. DCS workers sent medical releases signed by Ms. Jackson to doctors' offices where Ms. Jackson indicated Keely had received treatment. None of the doctors had records of treating Keely. (Docket Entry No. 70, Cole Aff. at ¶ 8.) DCS then asked Ms. Jackson to supply proof that Keely's prescriptions were written by a doctor, but she did not do so, and the documents she did produce conflicted with her earlier statements. DCS called a Child and Family Team Meeting to determine whether Keely should be taken into DCS custody. Ms. Jackson and her attorney attended the meeting. (Docket Entry No.67, Atkinson Aff.; Docket Entry No. 69, Burke-Salyers Aff.; Docket Entry No. 70, Cole Aff.; Docket Entry No. 72, Mix Aff.; Docket Entry No. 73, Nix Aff.; Docket Entry No. 74, Towery Aff.)

DCS wanted a psychological assessment of Keely to find out whether the medication her mother was giving her was appropriate and whether Keely had been trained to make sexual abuse allegations against Mr. Lanphere, and DCS wanted Ms. Jackson to have a psychological evaluation. There was no appropriate family member available for an emergency placement of Keely because Ms. Jackson lived in close proximity to her mother and the paternal grandmother lived with Mr. Lanphere. DCS was also concerned that there were additional sexual abuse allegations pending against Mr. Lanphere. At the conclusion of the long

and contentious Child and Family Team Meeting, DCS employees made a decision to remove Keely on an emergency basis based on concerns that Ms. Jackson was improperly medicating Keely, that Ms. Jackson was a flight risk, and that there was no appropriate relative with whom to place the child. Although Plaintiff disputes many of the details concerning the two investigations leading up to this decision,[2] there is no dispute that DCS employees exercised their discretion to take Keely into protective state custody on March 10, 2004, following the investigations.

DCS filed a petition to adjudicate Keely a dependent and neglected child (Docket Entry No. 66-2), and a preliminary hearing was held on March 12, 2004. The Juvenile Court ordered Keely taken into state custody. (Docket Entry No. 66-3.)

The evidence shows that, shortly after Keely was taken into state custody, she fell playing on a slide and injured a tooth. DCS workers immediately took Keely to a dentist. (Atkinson Aff. ¶ 11; Cress Aff. ¶ 6; Nix Aff. ¶ 8.) During visitations with Ms. Jackson, Keely would exhibit normal scrapes and bruises. Keely was very articulate for her age and she could always account for any bruises or scrapes. She was taken to a doctor on a regular basis. Before visits, Ms. Cress

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[2] Many of the record citation provided by Plaintiff do not support the positions she takes (Docket Entry No. 80, Ex. 2; Ex. 8 at 107-108; Ex. 10 at 603, 606, 623, 636, 648, 666; Ex. 14, 1327; Ex. 16 at 37 or the transcript pages cited are simply not included in the record for the court to review. (Id. Ex. 4 at 31; Ex. 8 at 245, 246, 263; Ex. 10 at 610, 628, 697, 698, 763; Ex. 9 at 527; Ex. 14 at 1316; "Ex. __" at 1060.)

asked Keely if she felt safe or had any problems and Keely never said anything that caused concern. Keely would roll her eyes when Ms. Jackson was present. Ms. Jackson said it was caused by some kind of psychosis that Keely suffered. Keely was taken to the Vanderbilt Center for Excellence, but the psychologist stated there was no psychosis. Keely then saw an eye doctor, who stated there was nothing medically wrong with her. Keely stopped the behavior shortly after entering state custody. (Cress Aff. ¶¶ 8-10.)

A referral was made to DCS on May 25, 2004 regarding bruises and marks observed on Keely. The matter was fully investigated, no evidence was found to substantiate physical abuse of Keely while in state custody, and the file was closed on June 29, 2004. (Docket Entry No. 68, Blanchard Aff. ¶¶ 3-4.)

Keely was nervous about visiting Mr. Lanphere at first, but eventually she would run to greet him when he arrived. Keely and Mr. Lanphere had unsupervised visitation beginning in July 2004. After these visits began, Keely reported that prior to coming into DCS custody, Mr. Lanphere had sexually abused her. Pending an investigation into this allegation, unsupervised visitation with Mr. Lanphere was suspended. Keely then disclosed that she had lied about the sexual abuse allegations, a full investigation of Mr. Lanphere cleared him of any wrongdoing, and DCS resumed his unsupervised visitation. (Cress Aff. at ¶¶ 13-16.)

DCS sets minimum visitation for a parent whose child is in state custody of four hours per month. Ms. Jackson started visitations with Plaintiff at two hours

per week. She was then permitted to increase her visitations with Plaintiff to four hours per week and then to six hours per week. Ms. Jackson also had scheduled telephone conversations with Plaintiff two to three times a week. (Id. at ¶ 17.)

While Keely was in state custody, her foster parents took her to church with them. Ms. Jackson objected because she did not want her child exposed to the religious views of the foster parents, which were different than her own. After Ms. Jackson complained, DCS worker Keri Cress told the foster parents to stop taking Keely to church with them. (Docket Entry No. 71, Cress Aff. ¶ 11.) Yet, Keely wanted to go to church with her foster family. (Docket Entry No. 75, Wilson Aff. ¶ 10.) On May 13, 2004, Ms. Jackson signed a letter permitting Keely to go to church with her foster family, but asking that the foster parents not teach Keely their religious beliefs. (Id. ¶ 12; Ex. 66-1.)

In determining whether a state employee is shielded from civil liability due to qualified immunity, the Sixth Circuit typically employs a two-step analysis: "'(1) whether, considering the allegations in a light most favorable to the party injured, a constitutional right has been violated, and (2) whether that right was clearly established.'" Swiecicki v. Delgado, 463 F.3d 489, 497-498 (6th Cir. 2006) (quoting Estate of Carter v. City of Detroit, 408 F.3d 305, 310-311 (6th Cir. 2005) (citing Saucier v. Katz, 533 U.S. 194, 201 (2001)). The Sixth Circuit also occasionally performs a third step in the qualified immunity analysis. See Estate of Carter, 408 F.3d at 311 n.2. When used, the third step requires inquiry into "'whether the plaintiff offered sufficient evidence to indicate that what the

official allegedly did was objectively unreasonable in light of the clearly established constitutional rights.'" Swiecicki, 463 F.3d at 497-498 (quoting case omitted). Since Saucier the Supreme Court has continued to use the two-step approach to qualified immunity, but the Sixth Circuit has noted "the three-step approach may in some cases increase the clarity of the proper analysis." Estate of Carter, 408 F.3d at 311 n.2. If the case at issue is one of the many cases where, if the right is clearly established, the conduct at issue would also be objectively unreasonable, then the Sixth Circuit collapses the second and third prongs in an effort to avoid duplicative analysis. Swiecicki, 463 F.3d at 498. Throughout the analysis, the burden is on the Plaintiff to show that the Defendants are not entitled to qualified immunity. See Silberstein v. City of Dayton, 440 F.3d 306, 311 (6th Cir. 2006).

Plaintiff claims that Defendants violated her substantive due process rights by (1) seizing her without an adequate investigation, (2) allowing her to be exposed to unwelcome religious beliefs while in foster care, (3) exposing her to an individual whom she had accused of sexually molesting her, (4) causing her a loss of societal relations with her mother, and (5) failing to investigate her injuries and provide for her medical needs. Even assuming that each of these claimed rights was clearly established in 2004, Plaintiff did not produce sufficient evidence in opposition to summary judgment to show that the actions taken by these named Defendants were objectively unreasonable in light of Plaintiff's clearly established constitutional rights. See Swiecicki, 463 F.3d at 497-498.

Plaintiff's limited factual showing does not controvert Defendants' evidence that they acted in an objectively reasonable manner in: conducting an adequate investigation before taking Plaintiff into emergency custody following a Child and Family Team Meeting attended by Plaintiff's mother and her attorney; in permitting Plaintiff to continue attending church services with her foster family at Plaintiff's request and with her mother's written permission; in investigating sexual abuse allegations against Mr. Lanphere which proved to be unfounded, especially in light of Plaintiff's admission that she lied about the allegations; in providing Plaintiff with more hours of visitation with her mother than are usually allowed under state policy; and in providing Plaintiff with needed medical and dental care. Accordingly, the Court concludes that all of the named Defendants are entitled to qualified immunity for their actions connected with Plaintiff's case. See Malley v. Briggs, 475 U.S. 335, 341 (1986) (qualified immunity protects all but the plainly incompetent and those who knowingly violate the law).

IV. CONCLUSION

For the reasons stated, Defendants' Motion to Dismiss The Second Amended Complaint (Docket Entry No. 60) will be GRANTED. Alternatively, Defendants' Motion For Summary Judgment (Docket Entry No. 64) will be GRANTED on the ground that Defendants are entitled to qualified immunity for their actions. The case will be dismissed with prejudice.

An appropriate Order will be entered.

/s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

No. 3:06-0182

[Filed August 8, 2007]

SANDI D. JACKSON, individually, and as next friend and parent of KEELY A. JACKSON, a minor child under the age of eighteen years old,	)
Plaintiffs,	)
v.	)
FRANK NIX, SUSIE YONKERS, JEANNIE COLE, AMY BURKE, SHANNON ATKINSON, KIM WILSON, TERESA TOWERY AMY NIX, KERI CRESS, VIOLA MILLER, all sued in their individual capacity,	)
Defendants.	)

ORDER

For the reasons stated in the Memorandum entered contemporaneously herewith,

– –

(1) Defendants' Motion to Dismiss The Second Amended Complaint (Docket Entry No. 60) is hereby GRANTED.

(2) Alternatively, Defendants' Motion For Summary Judgment (Docket Entry No. 64) is hereby GRANTED.

(3) This case is hereby DISMISSED WITH PREJUDICE.

(4) Entry of this Order on the docket shall constitute entry of final Judgment in accordance with Federal Rules of Civil Procedure 58 and 79(a).

It is so ORDERED.

/s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

No. 3:06-0182

[Filed February 9, 2007]

SANDI D. JACKSON, as next friend and parent of KEELY A. JACKSON, a minor child under the age of eighteen years old,	)
Plaintiffs,	)
v.	)
FRANK NIX, SUSIE YONKERS, JEANNIE COLE, AMY BURKE, SHANNON ATKINSON, KIM WILSON, TERESA TOWERY, AMY NIX, KERI CRESS, all sued in their individual capacity,	)
Defendants.	)

JURY DEMAND
JUDGE ECHOLS

SECOND AMENDED COMPLAINT

Comes the Plaintiff complaining of the Defendants and would show unto the Court.

1. Jurisdiction. This Court has jurisdiction to hear this case pursuant to title 28 U.S.C. § 1343 in that this case is brought pursuant to Title 42 U.S.C. § 1983, the Civil Rights Act of 1871 for deprivation of rights guaranteed by the Fourteenth Amendment to the United States Constitution.

2. Parties.

2.1. Plaintiff. The Plaintiff, Keely A. Jackson [daughter-Jackson] is the natural daughter of the Sandi D. Jackson and is a child under the age of eighteen years old.

2.2. Defendant. The Defendant, Frank Nix [Nix] at all times mentioned in this Complaint, was an employee of the State of Tennessee, Department of Children's Services [DCS]. He is sued individually.

2.3. Defendant. The Defendant, Susie Yonkers [Yonkers] at all times mentioned in this Complaint, was an employee of the State of Tennessee, Department of Children's Services [DCS]. She is sued individually.

2.4. Defendant. The Defendant, Jeannie Cole [Cole] at all times mentioned in this Complaint, was an employee of the State of Tennessee, Department of Children's Services [DCS]. She is sued individually.

2.5. Defendant. The Defendant, Amy Burke [Burke] at all times mentioned in this Complaint, was an employee of the State of Tennessee, Department of Children's Services [DCS]. She is sued individually.

2.6. Defendant. The Defendant, Shannon Atkinson [Atkinson] at all times mentioned in this Complaint, was an employee of the State of Tennessee, Department of Children's Services [DCS]. She is sued individually.

2.7. Defendant. The Defendant, Kim Wilson [Wilson] at all times mentioned in this Complaint, was an employee of the State of Tennessee, Department of Children's Services [DCS]. She is sued individually.

2.8. Defendant. The Defendant, Teresa Towery [Towery] at all times mentioned in this Complaint, was an employee of the State of Tennessee, Department of Children's Services [DCS]. She is sued individually.

2.9. Defendant. The Defendant, Amy Nix [Nix] at all times mentioned in this Complaint, was an employee of the State of Tennessee, Department of Children's Services [DCS]. She is sued individually.

2.10. Defendant. The Defendant, Keri Chess [Chess] at all times mentioned in this Complaint, was an employee of the State of Tennessee, Department of Children's Services [DCS]. She is sued individually.

3. Color of Law. The actions of the Defendants, state officials, who are being sued in their individual

capacities, were committed under color of law, and within the scope of their employment.

4. Facts of the Case. On March 10, 2004, the Plaintiff, Keely Jackson [Jackson] was seized from her mother, Sandi Jackson, without a hearing, by the Defendants. After a hearing before the Juvenile Court of Sumner County on March 12, 2004, Jackson was placed in the custody of the Department of Children's Services from March 10, 2004 until March 20, 2005. During this time, Jackson was first placed in a foster home run by Laurenda Wisenhut until December 23, 2004. Jackson remained in the custody of the State of Tennessee Children's Services until released to her mother on March 7, 2005.

5. Factual Violations of Due Process. The Defendants in this case, individually and in concert with each other, violated the Plaintiff's substantive due process rights as guaranteed by the Fourteenth Amendment to the United States Constitution by subjecting her to the following unnecessary harm by seizing her from the care of her mother and by failing to adequately supervise her while she was in foster care:

a. Allowing the Plaintiff's foster care parents to expose her to unwelcomed religious views which conflicted with that of her family's.

b. Exposing the Plaintiff to an individual whom she had accused of sexually abusing her, and thus allowing her to be sexually assaulted again while in foster care.

c. Failure to adhere to allow her mother to develop a relationship with her, by denying her adequate time with her mother.

d. Failure to adequately provide for her medical needs, when it was apparent she had been physically injured.

e. Failure to investigate injuries received by the Plaintiff while in foster care.

f. Causing her loss of societal relations by removing her from her mother's care, by failing to adequately investigate the circumstances leading to the removal and failing to verify critical information before seizing her.

6. The Defendants knew or should have known that the unnecessary harm was occurring to the Plaintiff while in their care, supervision and control. Their failure to adequately monitor and supervise the Plaintiff's environment amounted to a deliberate indifference to the welfare of the Plaintiff. Further, their failure to adequately investigate the circumstances leading to the Plaintiff's seizure and removal from the care of her mother amounted to deliberate indifference to the welfare of the Plaintiff.

7. Damages. As a direct and proximate result of the unconstitutional actions of the Defendants, heretofore set forth, the Plaintiff has suffered great emotional distress, humiliation and embarrassment, and loss of societal relationship with her family.

WHEREFORE, the Plaintiff prays:

1. That she be awarded compensatory damages in an adequate amount for pain and suffering, emotional distress, humiliation and embarrassment.

2. That the Plaintiff be granted a jury to hear her case.

3. That the Plaintiff be awarded reasonable attorney's fees pursuant to Title 42 U.S.C. § 1988.

4. That the Plaintiff be awarded the cost of this case.

5. That the Plaintiff be granted said other and further relief, as the Court deems fit and proper.

Respectfully submitted,

/s/ Phillip L. Davidson
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